The FCC's implementation schedule must also be cognizant of the need for signal carriage decisions to be implemented, where possible, prior to the beginning of the July 1st semi-annual copyright accounting period. As the NPRM correctly notes, the Copyright Office has consistently interpreted the Copyright Act to require full payment for any broadcast signal which is carried for any part of an accounting period.[33] To the extent that a cable operator is required to pay full copyright fees on a distant broadcast signal that it must drop for lack of retransmission consent, and then pay additional copyright fees for substitute programming, the cable operator is forced to incur unnecessary copyright fees with no real net gain in service to subscribers. Such costs will obviously drive up basic cable rates, contrary to the intent of the 1992 Cable Act.

The Commission's implementation timetable must also take into account the time needed to reconfigure the basic tier to accommodate changes in broadcast station carriage. For example, cable operators which presently offer a twelve channel basic tier and secure that tier by trapping out all channels above channel 13 may need to expand the number of channels offered to subscribers as part of the basic tier to comply with the new requirements of the statute. In such instances, operators will have to replace existing traps to allow basic subscribers to receive the additional channels. The FCC's

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[33]NPRM at ¶50.

implementation procedures must give operators enough time to identify exactly the type of equipment needed and then to order, receive and install the equipment prior to the October 6, 1993 deadline.[34] In geographically scattered systems, the mere installation of equipment once it is on hand can take several months.

Furthermore, because in many instances subscribers will be losing access to broadcast stations which have been carried on systems for many years, the implementation period must allow sufficient time for cable operators to prepare and educate subscribers for the adjustment. Indeed, the mechanics involved merely in producing new marketing materials and program guides that reflect new channel lineups takes approximately two months. Finally, many cable operators have franchise requirements that require thirty to sixty days advance notice prior to the implementation of any programming changes. Such requirements are expressly sanctioned by the new legislation and will have to be honored.[35]

Based on all of the foregoing considerations, the FCC should require local commercial stations to elect between retransmission consent and must-carry and notify each cable

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[34]There is the very real possibility that the widespread service reconfiguration that will occur to meet statutory requirements will result in equipment backorders and delays similar to those experienced in 1984 when the Commission required cable systems to begin offsetting frequencies in the aeronautical communications and navigation bands.

[35]See 47 U.S.C. §544(h)(i).

system via written notice of their election by May 1, 1993 and by May 1st every three years thereafter.[36] It is a simple matter for broadcast stations to determine which ADI they are located in, which counties are located in that ADI, and which cable systems operate in those counties. ADI information is readily available from such publications as Broadcasting and Cable Marketplace. Similarly, the Cable and Services Volume of the Television and Cable Factbook contains a listing of cable systems by county within each state. Given the ready availability of the information required by broadcasters to meet the must-carry/retransmission consent notification requirement, it will be far easier for broadcasters to make and notify cable systems of their must-carry and retransmission consent election within thirty days than it will be for cable operators to actually implement the results of those decisions within the five months remaining between May 1st and October 6th.

Moreover, the must-carry rules must also become effective on the same date as retransmission consent, October 6, 1993. To do otherwise would cause the dislocations described above to happen twice instead of just once. The rules are inextricably

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[36]This would give broadcasters a full thirty days from the FCC's April 1st target date to make their election and notify individual cable systems. This is more than enough time given the fact that broadcasters have had since the October 5, 1992 enactment date of the statute to contemplate their election and identify the cable systems located in their ADIs to whom notice of the election must be sent. See footnote 4, supra, re cable systems located in more than one ADI.

intertwined, as the Commission notes, and thus they should become enforceable at the same time.

The Commission's implementation procedures should specify a default election procedure that will maintain the status quo in the absence of an affirmative must-carry/retransmission consent election. Thus, any local station which was being carried by a system on May 1st would be deemed to have elected must-carry rights in the absence of an affirmative written election. Any local station which was not being carried on a cable system as of May 1st would be precluded from asserting must-carry or retransmission consent rights until the next three-year window. By adopting a default election procedure which maintains the status quo, the Commission would prevent unnecessary disruption of established viewing patterns and the associated costs that such disruptions would entail without in any way limiting a local station's right to elect between must-carry and retransmission consent. Such a procedure ensures that a station wishing to exercise its election rights remains free to do so as long as such election is accomplished by the May 1st deadline.

As a final matter, the Commission has sought comment on its interpretation that Section 614(b)(9) of the 1992 Cable Act requires cable operators to provide thirty days advance written notice before deleting any local commercial station in the initial period after the must-carry rules become effective and

before the retransmission consent provisions become effective.[37] The Commission's tentative conclusion to apply the notice requirement to all local commercial stations is overly broad. For example, the Commission itself acknowledges that the notification provisions of Section 614(b)(9) do not apply to stations which elect retransmission consent.[38] Thus, where a station has elected retransmission consent either through an affirmative election by giving notice to the cable operator or because it has been deemed to grant retransmission consent under default procedures adopted by the Commission, a cable operator should not be required to provide notice of deletion of that station absent a provision in the retransmission consent agreement requiring such notice. On the other hand, where a cable operator deletes a station prior to the election deadline imposed by the Commission and the station has not yet made an election or has elected must-carry rights, the thirty-day notice requirement is reasonable and should apply.

D. Relationship Between Must-Carry and Retransmission Consent.

The Commission has requested comment on its tentative conclusion that cable operators may count channels used for the carriage of local television stations granting retransmission

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[37]This, of course, assumes that the two provisions become effective on different dates, a course of action which Commenters urge the Commission not to take.

[38]NPRM at ¶55.

consent to meet the channel quota requirements of Section 614.[39] The legislative history of the retransmission consent provisions in the 1992 Cable Act supports the Commission's conclusions that Congress intended channels used to carry local retransmission consent stations be counted towards the maximum number of channels which cable operators are required to devote to the carriage of local television signals. The Senate Report states unequivocally that:

> [T]he FCC's rules should provide that carriage of a station exercising its right of retransmission consent will count towards the number of local broadcast stations that a cable system is required to carry under sections 614 and 615.[40]

Similarly, the sectional analysis of Section 6 of the 1992 Cable Act contained in the Senate Report states:

> [T]he election of certain stations to negotiate with cable systems for retransmission consent will not have any effect on the rights of other stations to signal carriage under sections 614 or 615. However, the Committee intends that stations which exercise their retransmission consent rights and are carried by cable systems will be counted toward the total number of stations required to be carried under sections 614 and 615.[41]

Clearly, Congress recognized that a station, which otherwise meets the definition of a local station to which the must-carry cap provision applies, does not become any less local merely by electing to negotiate retransmission rights in lieu of asserting must-carry.

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[39]NPRM at ¶54.

[40]Senate Report at 37-38.

[41]Senate Report at 84.

The Commission has requested comment concerning the proper criteria to be used to determine when a local retransmission consent station, which is afforded less than full time carriage, should count against the must-carry cap.[42] The Commission has correctly noted that retransmission consent stations may negotiate for partial carriage of their programming schedule.[43] To the extent that program suppliers or networks are allowed to use programming contracts and affiliation agreements to limit or preclude a station from granting retransmission consent, there may be many instances where a particular station would be able to grant retransmission consent for only part of its broadcasting day. In such instances, a cable operator who carries such programming would still have to make available channel capacity for that purpose regardless of the actual number of hours such programming is carried. Therefore, the Commission should count any channel capacity which a cable operator regularly uses for the carriage of local signals regardless of whether or not such channels are used on a full time basis for such purposes.

The Commission requests comment on its tentative conclusion that the manner of carriage and channel positioning requirements which are granted to must-carry stations do not apply to retransmission consent signals.[44] As noted by the

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[42]NPRM at ¶61.

[43]NPRM at ¶60-61.

[44]NPRM at ¶¶55-56.

Commission, the statutory language is not uniform with respect to the channel positioning and manner of carriage requirements. However, the clear language of Section 325(b)(4) leaves no doubt that these provisions do not apply to retransmission consent stations. That section provides:

> If an originating television station elects under paragraph (3)(B) to exercise its right to grant retransmission consent under this subsection with respect to a cable system, the provisions of section 614 shall not apply to the carriage of the signal of such station by such cable system.

47 U.S.C. §325(b)(4). Since manner of carriage and channel positioning requirements are contained in Section 614, it is evident that Congress did not intend for such privileges to apply to stations electing retransmission consent.[45]

There is no need or sound policy reason to grant channel position and manner of carriage rights to stations electing retransmission consent since such issues can always be negotiated between the cable operator and the station as part of the retransmission consent agreement. If the Commission were to allow stations to elect retransmission consent and also impose channel positioning rights and manner of carriage requirements on cable operators, this would seriously undercut

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[45]Such privileges which apply exclusively to commercial stations electing must-carry include channel positioning rights; carriage of closed captioning; carriage of program-related material contained in the vertical blanking interval where technically feasible; notification prior to station deletion or repositioning; the prohibition on repositioning during a "sweeps" period; carriage of full schedule; the requirement to carry the nearest network affiliate under certain circumstances; and limitations on compensation for cable carriage.

the ability of cable operators to negotiate retransmission consent agreements that reflect a marketplace determined value of cable carriage and would most certainly result in higher retransmission consent costs, exerting an upward pressure on basic cable rates.

As a final point on the relationship between retransmission consent and must-carry, Commenters urge the Commission to exempt systems with 12 or fewer channels and less than 300 subscribers from retransmission consent. Such systems are exempt from commercial must-carry,[46] and to subject them to retransmission consent would place a heavier burden on them since every station they carry would be subject to the consent requirement. Their small size and the policy behind the must-carry exemption militate in favor of exempting them from retransmission consent obligations.

E. **Contractual Issues.**

By far the most important contractual issue raised in the NPRM is whether the terms of existing or future agreements between program suppliers and broadcast stations can supersede the new retransmission consent rights created by Section 325(b)(1)(A) of the Communications Act. Central to the determination of that issue is the proper interpretation of Section 325(b)(6) of the Communications Act which provides that:

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[46]Section 614(b)(1).

> Nothing in this section shall be construed as modifying the compulsory copyright license established in section 111 of Title 17, United States Code, or as affecting existing or future video programming licensing agreements between broadcasting stations and video programmers.

47 U.S.C. §325(b)(6). The only way to implement retransmission consent in a manner that leaves both the compulsory license and existing or future programming contracts intact is to allow broadcasters complete freedom to negotiate retransmission consent with cable operators unhampered by their programming or network affiliation agreements.

The statutory language and legislative history of the retransmission consent provisions make absolutely clear that the retransmission consent was intended to give broadcasters control over their signal by distinguishing between the rights in the signal and the rights in the programming carried on that signal. This distinction is reflected in the statutory language. Subsection (a) of Section 325 clearly speaks in terms of programming and provides, in relevant part, that:

> Nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station. (emphasis supplied).

47 U.S.C. §325(a). New subsection (b) of Section 325 clearly speaks in terms of a broadcaster's signal and states that:

> No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station . . . . (emphasis supplied).

47 U.S.C. §325(b). In referring to a station's signal rather than its programming, Congress clearly sought to avoid an

interpretation of Section 325(b) that would allow broadcast networks and program suppliers to interfere with a broadcast station's right to negotiate cable carriage.

The Senate Report on retransmission consent is particularly illuminating in this regard. That report states, in relevant part, that:

> Section 15 of the bill amends Section 325 of the 1934 Act (47 U.S.C. 325) to establish the right of broadcast stations to control the use of their signals by cable systems and other multichannel video programming distributors . . . . The Committee believes, based on the legislative history of this provision, that Congress' intent was to allow broadcasters to control the use of their signals by anyone engaged in retransmission by whatever means.
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> * * *
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> The Committee is careful to distinguish between the authority granted broadcasters under the new section 325(b)(1) of the 1934 Act to consent or withhold consent for the retransmission of the broadcast signal, and the interest of copyright holders in the programming contained on the signal.
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> * * *
>
> Cable systems carrying the signals of broadcast stations, whether pursuant to an agreement with the station or pursuant to the provisions of new sections 614 and 615 of the 1934 Act, will continue to have the authority to retransmit the programs carried on the signals under the section 111 compulsory license. The Committee emphasizes that nothing in this bill is intended to abrogate or alter existing program licensing agreements between broadcasters and programming suppliers, or to limit the terms of existing or future licensing agreements.[47]

The foregoing language evidences as Congress' clear desire to implement a retransmission consent scheme that would give

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[47]Senate Report at 34, 36.

broadcasters the ability to negotiate with cable systems the terms and conditions of cable carriage unimpeded by the separate agendas of the broadcast networks and program syndicators.

Separating the rights in the underlying programming from the rights in the signal over which the programming is carried ensures that the compulsory copyright license remains unmodified as required by Section 325(b)(6) by preventing a cable operator from claiming that the retransmission consent granted by a broadcasting station includes the rights to the underlying programming. Thus, a cable operator who receives retransmission consent from a broadcast station to carry the station's signal must still fulfill the requirements of the compulsory copyright license for the programming contained on that signal[48] or risk a lawsuit for copyright infringement. The grant of retransmission consent by a broadcast station also leaves existing and future program agreements unaffected since program owners are compensated through a combination of direct licensing fees from broadcasters and compulsory license fees from cable operators in exactly the same way as they were prior to enactment of retransmission consent. Although a broadcaster can elect to refuse retransmission consent, such a refusal could actually benefit the copyright holder since a cable operator who desires to carry the programming may decide to negotiate in the marketplace for carriage of that programming

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[48]17 U.S.C. §111.

directly with the program supplier, or to carry a cable network which has obtained rights to such programming.

Just as Section 325(a) prevents broadcasters from sub-licensing the programming contained on their signal by granting retransmission consent to other broadcasters, program owners have no legitimate interest in a broadcaster's signal apart from the programming and should not be allowed to dictate the terms of carriage agreements between cable operators and broadcast stations.[49] An interpretation of the statute which would allow programmers or networks to dictate the circumstances or terms under which a broadcast station could or could not exercise its retransmission consent or must-carry rights via their programming contracts is clearly prohibited by Section 325(b)(6) since such an interpretation would effectively modify such contracts to cede to program distributors and networks contractual control over signal carriage issues which they have never had.[50] For example, if

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[49]Another way to look at this would be to view a broadcaster's retransmission consent rights in its signal as akin to the rights which a wired or wireless cable operator has in preventing theft of service. Where an individual steals service, the Communications Act gives the cable operator a cause of action separate and apart from any intellectual property rights which the owners of programming carried on the cable system might have. It would be just as inappropriate for a programmer to attempt to contractually limit a cable operator's theft of service rights by contract as it would be to allow a programmer or network to control a broadcaster's retransmission consent/must-carry election.

[50]Indeed, any broadcast station which contractually relinquishes such control over its signal may be in violation of Section 310(d) of the Communications Act.

the statute were interpreted to allow the exercise of retransmission consent to be a matter of contract between a broadcast station and a programmer or network, these latter entities would be able dictate whether broadcast stations exercise must-carry rights or retransmission consent, and the terms and conditions of cable carriage. Such a result is clearly contrary to that which Congress intended in enacting Section 325(b), which was to grant broadcasters control over their signal. Such a result also abrogates the copyright compulsory license by allowing program suppliers and networks to require what is in fact direct licensing for their programming.

Most significantly, an interpretation of the 1992 Cable Act which allows program suppliers to dictate the exercise of retransmission consent by broadcast stations would result in massive disruption to long established viewing patterns and the deprivation of programming to cable subscribers.[51] PCTA's Signal Carriage Survey demonstrates that approximately 75% of the cable systems in that state carry signals from outside their ADI and for which retransmission consent would be required. Nearly half of those systems carry at least three such stations. If programmers and networks were allowed to

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[51]The Commission has long recognized the need to implement rules in a manner which avoids such disruption. See, e.g., Cable Television Report and Order, 36 FCC 2d 143 (1972) at ¶75; In re Video Vision et al., 71 FCC 2d 1447 (1979) at ¶¶5-6; Report in Gen. Docket No. 86-336, 2 FCC Rcd 1669 (1987) at ¶197.

control a broadcast station's retransmission consent election, this would effectively give them the power to reimpose distant signal carriage limitations even more far reaching than those which were removed by the FCC in 1980, since many of the stations that would be subject to deletion have always been considered local.[52] It should be noted that two-thirds of the stations for which retransmission consent would be required for continued carriage have been carried on the cable systems for more than twenty years and in most cases those stations are available off-the-air in the cable operator's service area.[53]

The potential loss of programming to the public is no less a consideration where distant network stations are contractually precluded from granting retransmission consent. Networks license their programming on a national basis, and accordingly receive no additional compensation under the compulsory copyright license.[54] In such situations, there is

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[52]The Commission has explicitly repudiated the concept of retransmission consent as a means of regulating distant signal carriage. Owensboro Cablevision, 32 RR 2d 879 (1975).

[53]The PCTA study actually understates the number of instances where retransmission consent would be required since it does not account for instances where the New York superstations are brought in by microwave or received off-air, or cases in which a local ADI station might desire or be forced to elect retransmission consent rather than must-carry.

[54]The compulsory license is intended to compensate program suppliers for the distant, non-network programming carried by cable systems. Accordingly, copyright fees for network stations are calculated on the basis of one-quarter of a distant signal equivalent based upon the assumption that this corresponds to the amount of distant non-network programming carried on a typical network station. See, e.g., 17 U.S.C.

(continued...)

no reason to allow the networks to exact additional payment for their programming since Congress has determined that the networks already receive full compensation. Indeed, since networks rarely have more than a single affiliate in each ADI, they would have the incentive and the ability to require local affiliates to elect retransmission consent and share in any retransmission consent payments while at the same time precluding their affiliates from granting retransmission consent outside of their ADIs.

To allow broadcast networks to control the exercise of retransmission consent by their affiliates would not only result in higher retransmission consent costs being paid by cable subscribers for programming which has already been licensed for national distribution, but would also reap the unintended consequence that network programs that are preempted by the local affiliate could not be brought in via distant affiliate as is presently allowed. For example, on a weekly basis Coaxial Communications in Columbus, Ohio provides its subscribers with the network programs that the local CBS, NBC and ABC affiliates have chosen to preempt. A copy of the preempt schedule for three different weekly periods is attached hereto as Exhibit 2. A cursory glance shows that the number of such programs is not insignificant and that they include such popular network shows as "Roseanne" and "Coach." The public

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[54](...continued)
§111(f) (1976); H.R. Rep. No. 94-1476, 94th Cong. 2d Sess. 90 (1976).

may well be deprived of any opportunity to see this programming if network affiliates outside the Columbus ADI are contractually precluded from negotiating retransmission consent agreements with cable operators.

Finally, the Commission requests comment on its tentative conclusion that disputes between cable operators and television stations over retransmission consent should be resolved in a court of competent jurisdiction. Such an interpretation clearly violates Congress' express intent that the area of broadcast signal carriage, whether by must-carry or retransmission consent, be subject to continuing oversight by the Commission. Section 325(b)(3)(A) provides, in relevant part, that:

> [T]he Commission shall commence a rulemaking proceeding to establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection and of the right to signal carriage under Section 614 and such other regulations as are necessary to administer the limitations contained in paragraph (2) [delineating the exclusions to the retransmission consent requirements].

47 U.S.C. §325(b)(3)(A). By mandating the Commission to adopt rules to implement and administer the retransmission consent requirement, it is clear that Congress intended the Commission to conduct continuing oversight of the impact that retransmission consent would have on relationships between cable operators and broadcast stations. Such matters are not new to the Commission, which has been regulating this area and hearing such disputes for more than twenty years. It is clear

that Congress intended to rely on the particular expertise of the Commission to ensure that any such disputes are resolved in a manner consistent with the implementation of other communications policies generally, including the 1992 Cable Act mandate for the Commission to ensure that retransmission consent costs not be allowed to create an upward pressure on basic cable rates. Clearly, with respect to broadcast signal carriage and the exercise of retransmission consent, there is a need for national uniformity of application and interpretation which the Commission is uniquely qualified to provide.

F. **Reasonableness of Rates.**

The Commission correctly notes that Section 325(b)(3)(A) of the 1992 Cable Act requires the Commission to consider the impact of retransmission consent on rates for basic service to ensure that such rates are reasonable. Although the Commission has indicated that it plans to leave this issue for its rate proceeding, several points deserve mention here. The Commission is correct that retransmission consent fees are a direct cost of providing basic service, and thus cable operators must be allowed to pass through the costs of retransmission consent fees as well as any increases to such fees directly to subscribers without having to obtain approval pursuant to Section 623(a)(2)(A). However, the Commission also has an affirmative obligation to ensure that retransmission consent terms demanded by broadcasters are not unreasonable. Thus, for example, the Commission must adopt a policy

prohibiting a station from unreasonably refusing to grant retransmission consent.[55]

To the extent that the Commission allows stations in their sole discretion to choose to refrain from granting retransmission consent, the Commission can and should prevent the public from being deprived of programming that would result if such stations were allowed to require network non-duplication and syndicated exclusivity blackouts. One of the Commission's main justifications for reimposing syndicated exclusivity and expanding network non-duplication protection was to redress the perceived market imbalance resulting from the loss of must-carry rights by broadcasters. The Commission gave syndicated exclusivity and expanded network non-duplication rights to broadcasters as leverage to assist them in obtaining cable carriage which they could no longer demand as a matter of right.[56] This rationale, however, no longer holds true given the fact that the 1992 Cable Act gives broadcast stations far broader must-carry rights than they have enjoyed

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[55]This is consistent with long established policy developed under the retransmission consent provisions of Section 325(a) of the Communications Act. See, e.g., Roanoke Telecasting Corp., 20 RR 2d 613 (1970); The Heart of the Black Hills Stations, 21 RR 2d 429, affirmed 21 RR 2d 1003, affirmed 22 RR 2d 436 (1971).

[56]Indeed, this is exactly why, unlike its original syndicated exclusivity and network non-duplication rules which were in effect when must-carry was in place and only applied to stations actually carried on a cable system, the new syndicated exclusivity rules allow stations which are not being carried on the cable system to assert blackout rights. See Report and Order in Gen. Docket No. 87-24, 3 FCC Rcd 5299 (1988) at ¶95.

under previous versions of the Commission's rules and, in addition, unprecedented control over the use of their signals via the retransmission consent provisions. In a situation where a broadcast station does not wish to be carried or seeks to exact an unreasonably high price for cable carriage, there is no public policy to be served by allowing that station to deprive cable viewers of syndicated or network programming received from other sources.

CONCLUSION

Commenters again urge the Commission to be cognizant of historical signal carriage patterns in fashioning its rules in this proceeding. The broadcasters can fully realize the benefits of must-carry and retransmission consent without unduly disrupting the viewing habits of millions of cable subscribers.

Respectfully submitted,

ADELPHIA COMMUNICATIONS CORPORATION; ARIZONA CABLE TELEVISION ASSOCIATION; CABLE TV OF GEORGIA; CABLE VIDEO ENTERPRISES; COAXIAL COMMUNICATIONS, INC.; HAUSER COMMUNICATIONS, MID-AMERICA CABLE TELEVISION ASSOCIATION; MOUNT VERNON CABLEVISION, INC.; NASHOBA COMMUNICATIONS LIMITED PARTNERSHIP; PENNSYLVANIA CABLE TELEVISION ASSOCIATION; PRESTIGE CABLE TV; STAR CABLE ASSOCIATES; TELE-MEDIA CORPORATION; WESTSTAR COMMUNICATIONS, INC.; AND WHITCOM INVESTMENT COMPANY

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EXHIBIT 1

THE POTENTIAL IMPACT OF

THE RETRANSMISSION CONSENT

PROVISIONS OF THE 1992 CABLE ACT

Prepared For
Pennsylvania Cable Television Association
119 Pine Street
Harrisburg, Pennsylvania 17108

November 1992

A. OBJECTIVES

Section 6 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") amends Section 325 of the Communication Act of 1934 by prohibiting any cable system or other multichannel video programming distributor from retransmitting the signal of a broadcast station, or any part thereof, after October 5, 1993, without the express authority of the originating station, except in specifically enumerated limited circumstances. The present survey was undertaken by the Pennsylvania Cable Television Association ("PCTA") in an attempt to quantify the potential impact of these retransmission consent provisions. The survey sought to determine the number of cable systems which carried non-superstation commercial broadcast signals from outside of their ADI to which the retransmission consent provisions are applicable. The survey also sought to determine how many non-ADI, non-superstation commercial broadcast stations were carried on each such system. Information as to the length of time such non-ADI stations were carried on each cable system as well as their over-the-air availability within the cable system service areas was solicited in order to gauge the potential impact of retransmission consent upon cable subscribers.

The 1992 Cable Act grants non-superstation commercial television broadcast stations the ability to elect between must-carry rights and retransmission consent within their ADI market. However, there is no way to predict which ADI stations will elect retransmission consent rather than must-carry rights. For that

reason, the PCTA survey was limited to non-ADI stations. Because the survey is limited to non-ADI stations and does not account for instances where ADI stations may elect retransmission consent instead of must-carry, the survey most likely understates the impact that retransmission consent will have on existing signal carriage practices.

B. METHODOLOGY

PCTA sent its survey questionnaire to all 178 member systems as part of its weekly newsletter. The questionnaire requested information on the ADI(s) in which the cable system is located. Accompanying each questionnaire was an ADI map which allowed operators to determine the ADI(s) into which their cable system fell. The questionnaire also asked for information as to call sign, off-air channel number and city of license for each of the non-ADI commercial stations carried, thereby allowing verification of the non-ADI status. Additionally, information as to the off-air receivability and the year cable carriage commenced was requested for all such stations. Copies of the questionnaire and accompanying newsletter are attached hereto as Exhibit A. Of the 178 member systems to whom surveys were mailed, 141 responded (79%).

Responses to the survey questionnaires received from PCTA members were divided into one of two groups depending upon whether the respondent was a single ADI or multiple ADI system.

A chart was prepared containing for each system the following information:

1. Name of system owner/operator
2. ADI(s) served
3. Number of stations carried from outside ADI(s)
4. Number of stations carried from outside ADI(s) that are available over the air.
5. Length of time stations carried from outside ADI(s) have been carried.

For multiple ADI systems, the chart also shows the number of stations carried outside each ADI served by the system as well as the number of stations outside all ADIs served. The chart of survey responses is attached hereto as Exhibit B.

The data was analyzed separately for multiple ADI systems and for single ADI systems and a table summarizing the survey results is found in Table 1. The data was first broken down to show how many systems carried stations from outside their ADIs. With respect to multiple ADI systems, the breakdown only includes stations from outside all of the ADIs served by the cable system. This limitation will tend to understate the impact of retransmission consent to the extent that the FCC treats a multiple ADI cable system as being in only a single ADI (the "primary ADI") and requires the system to obtain retransmission consent from stations in the non-primary ADIs.

Results were categorized by the number of non-ADI stations carried. Categories were established of at least 1, at least 3 and at least 6 non-ADI stations carried. Percentages were then